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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Butte)

THE PEOPLE,

Plaintiff and Respondent,

v.

LYNDEN DUANE SPERLING,

Defendant and Appellant.

C086891

(Super. Ct. No. 17CF05612)

In the course of a dispute with his neighbor, defendant Lynden Duane Sperling threatened his neighbor with a rifle. The neighbor's truck was damaged as he tried to get away from defendant. Defendant pled no contest to being a felon in possession of a firearm and now appeals the amount of the victim restitution order claiming the amount was not shown to be caused by his conduct. We affirm.

BACKGROUND

Defendant and his neighbor, Kevin Davis, had ongoing issues regarding an easement on defendant's property that provided access to Davis's home. Defendant had a

history of blocking the easement. One day, Davis and his friends were traveling on the easement and defendant had blocked it with a vehicle. A physical confrontation between defendant and Davis ensued in which defendant punched Davis in the back of the head and brandished a weapon at Davis. One of Davis's friends took the gun from defendant. Defendant went to his home and returned with a rifle or shotgun and threatened Davis. Davis backed his truck down the road away from defendant. Davis damaged his truck during his retreat from defendant.

Defendant pled no contest to being a felon in possession of a firearm and admitted he had a prior felony conviction. The trial court sentenced defendant to three years in prison, imposed various fines and fees, and reserved the issue of victim restitution for a contested hearing. The trial court noted the People had made a prima facie showing and the burden was on defense counsel to rebut that showing as unreasonable.

Davis's truck was damaged when it raked against the side of the road as he sought to escape from defendant. Davis requested restitution of \$3,725.74 to repair the vehicle and install security cameras on his property. The probation report included a statement from Davis claiming the driver's side of his truck had been damaged and a \$2,700.76 repair estimate from an auto body shop for repairs to the left side of the truck, rear lamps, and rear bumper. The probation report also included an undated "restitution checklist" indicating Davis was claiming \$2,000 in damage to his vehicle and \$500 for the security system.

To meet his burden to rebut the prima facie claim of restitution, defendant called Butte County Sheriff's Deputy Jake Smith. Smith responded to the scene the night of the incident between defendant and Davis. Smith testified one of the parties at the scene, either Davis or one of his friends, reported the truck had been scratched on the passenger's side. Smith did not take any pictures of the truck and did not recall seeing damage to it.

Defense counsel argued Davis had claimed only \$2,000 in the restitution checklist and the claim for \$2,700.76 appeared to represent additional repairs being done to his truck. He argued these additional charges were not related to defendant's conduct. The People confirmed the amount claimed for damage to the truck was \$2,700.76.

Based on the victim's statement, the trial court found the damage to the truck and the repairs were related to the crime and represented a reasonable amount based on the itemized estimate. The trial court acknowledged the deputy's testimony but found the victim's statement of damage was a reasonable basis supporting the claim. Accordingly, the trial court ordered defendant to pay \$2,700.76 in victim restitution to Davis.

DISCUSSION

Defendant contends Davis claimed only \$2,000 of damage to his truck and the additional \$700.76 was not demonstrated to have been caused by defendant's conduct; accordingly, he claims the restitution award should be reduced to \$2,000.

In every case in which defendant's conduct results in economic loss by the victim, the court "shall require that the defendant make restitution to the victim" based on the amount of loss claimed by the victim. (Pen. Code,¹ § 1202.4, subd. (f); see also Cal. Const., art. I, § 28, subd. (b)(13)(B).) This mandate that a victim is entitled to restitution based on the amount of loss the victim claims is at the core of the restitution statutory scheme. (*People v. Fulton* (2003) 109 Cal.App.4th 876, 885-886.) The victim initiates the process by identifying the type of loss sustained and its monetary value. Once the victim makes a prima facie showing, the burden shifts to the defendant to disprove the amount of losses claimed by the victim. (*Id.* at p. 886.) " '[T]he standard of proof at a restitution hearing is by a preponderance of the evidence, not proof beyond a reasonable doubt.' " (*People v. Keichler* (2005) 129 Cal.App.4th 1039, 1045.)

¹ Further references are to this code.

To the extent possible, the restitution shall fully compensate the victim for the actual cost of repairing damaged property. (§ 1202.4, subd. (f)(3)(A).) In making this calculation, the trial court “ ‘must use a rational method that could reasonably be said to make the victim whole, and may not make an order which is arbitrary or capricious.’ ” (*People v. Mearns* (2002) 97 Cal.App.4th 493, 498.) The trial court may accept a property owner’s statement in a probation report about the amount of loss, including the cost of repair. (*People v. Gemelli* (2008) 161 Cal.App.4th 1539, 1543.) “The defendant has the burden of rebutting the victim’s statement of losses, and to do so, may submit evidence to prove the amount claimed exceeds the repair or replacement cost of damaged or stolen property.” (*Ibid.*)

A trial court’s determination of the amount of restitution is reversible only if the appellant demonstrates a clear abuse of discretion. (*People v. Thygesen* (1999) 69 Cal.App.4th 988, 992.) “The order must be affirmed if there is a factual and rational basis for the amount.” (*People v. Akins* (2005) 128 Cal.App.4th 1376, 1382.) “ ‘ ‘ ‘[S]entencing judges are given virtually unlimited discretion as to the kind of information they can consider’ ” ’ in determining victim restitution.” (*People v. Phu* (2009) 179 Cal.App.4th 280, 283.) “Section 1202.4 does not, by its terms, require any particular kind of proof.” (*People v. Gemelli, supra*, 161 Cal.App.4th at pp. 1542-1543.)

Here, there is a factual and rational basis for the amount ordered. As the court noted prior to the restitution hearing, the prosecution had made a prima facie case for restitution in the amount of \$2,700.76 based on the victim’s impact statement and the repair shop estimate. Defendant’s only evidence to rebut the victim’s claimed damages was the deputy’s testimony that someone at the scene had told him the vehicle was damaged on the opposite side and that he did not see the damage. This testimony did not rebut the victim’s evidence as to the cost of repairs nor did it establish that the damage to be repaired was caused by something other than the victim’s attempt to escape defendant. The sentencing court was entitled to rely on the repair estimate and the victim’s

statements about the damage over the deputy's testimony. The trial court did not abuse its discretion in ordering defendant to pay \$2,700.76 in victim restitution.

DISPOSITION

The restitution order is affirmed.

/s/
Robie, J.

We concur:

/s/
Blease, Acting P. J.

/s/
Duarte, J.